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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/019,248	10/19/2001	Paivi Maisi	1390-0126P	1293	
2292 7	2292 7590 01/16/2004			EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			NOLAN, PATRICK J		
			ART UNIT	PAPER NUMBER	
			1644		
	•		DATE MAILED: 01/16/2004		

Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  1. If the period for many be available used the provisions of 37 CPR 1.136(a). In no event, however, may a reply be limely filled  1. If the period for reply specified above is lists than thirty (30) days, a reply whith the statutory primiting of the first or the period for reply specified above is lists than thirty (30) days, a reply whith the statutory primiting of the first or the period for reply will, by desident cause the specification to become ABANDONED (30 U.S. C. § 133).  1. If the period for reply is specified above, the maximum statutory period will graph and will applie 37 (6) (MAINTS form the mailing date of this communication.  1. Tailure to reply whith the set or extended period for reply will, by detailure, cause the specification to become ABANDONED (30 U.S. C. § 133).  1. If the period for reply is specified above, the maximum statutory period and or the communication.  1. This action is FINAL.  2. D. Image and the provided period of the communication is non-final.  3. Image and the provided period of the provided period of the communication is non-final.  3. Image and the provided period of the provided period period period period period period of the provided period period period	·		
Examin r   Art Unit   1644   Patrick J. Nolan   Patrick J. Patrick J. Patrick J. Nolan   Patrick J. Patrick J. Patrick J. Patrick J. Patrick J. Pa		Application No.	Applicant(s)
Patrick J. Nolan  Patrick J. N		10/019,248	MAISI ET AL.
The MAILING DATE of this communication app ars on the cov r sheet with the correspondence address — Period for R pty  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions of site may be available under the provisions of 3 CFR 1.136(a). In or overth, however, may a raphy be timely filed after SIX (b) MONTH'S from the maining date of this communication. Tooly within the station primarium of thiny, 30) days will be corridored famely.  I the period time may be available of the intent than the main and the provision of the communication. Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).  Any reply received by the Office stem than the repression after the maining date of this communication, even 3 timely fixed, may reduce any scanned patent them adaptament. See 37 CFR 1.79(b).  Status  1) □ Responsive to communication(s) filed on 23 October 2003.  2a) □ This action is FINAL.  2b) □ This action is non-final.  3) □ Since this application is in condition for allowance except for formal malters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) □ Claim(s) 18-51 is/are pending in the application.  4a) Of the above claim(s) 24-30.32.41-47 and 49 is/are withdrawn from consideration.  5) □ Claim(s) is/are allowed.  6) □ Claim(s) is/are allowed.  6) □ Claim(s) is/are allowed.  7) □ Claim(s) is/are allowed.  8) □ Claim(s) is/are objected to by the Examiner.  9) □ The specification is objected to by the Examiner.  10) □ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner.  Application Papers  9) □ The provisional specification is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § \$119 and 120  11) □ Certified copies of the priority documents have been received in Application No. is/are ap	Office Action Summary	Examin r	Art Unit
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MALING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In role work, however, may a reply be timely filled  - Extensions of time may be available under the provisions of 37 CFR 1.136(b). In role work, however, may a reply be timely filled  - Extensions of time may be available under the provisions of 37 CFR 1.136(b). In role work, however, may a reply be timely filled  - If the pectod for reply is pacified above, the maintainun statutory period will apply and and apply and and apply and app			
THE MAILING DATE OF THIS COMMUNICATION.  Extendinos of time may be available under the provision of 32 CFR 1.78(a). In co event, however, may a reply be limely filled after SIX (8) MONTES from the mailing date of this communication. If the peeds of may be provided under the provision of the pro		ars on the cov r sheet with	the correspondence address
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1. Claims 18-51 are pending.

2. Applicant's election with traverse of Group I, claims 18-23, 31, 33-40, 48 and 50-51 in the Paper received 10-24-3 is acknowledged. The traversal is on the ground(s) that according to MPEP 1850, since no lack of unity was found during the IPER, the claims should be examined together. This is not found persuasive because MPEP section 1893.03(d) provides Examiner guidance on lack of unity in 35 USC 371 applications. There is no requirement to subjugate the US examination process to the findings of the IPER.

The requirement is still deemed proper and is therefore made FINAL.

- 3. Claims 24-30, 32, 41-47 and 49 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the Paper received 10-24-03.
- 4. Claims 31 and 33-34, 48 and 50-51 provides for the use of antibodies to MMP's, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 31, 33-34, 48 and 50-51 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products*, *Ltd.* v. *Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claims 18-23 and 35-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Torii et al.

Torii et al., teaches detecting MMPs in BAL fron patients with ARDS in a single step sandwich enzyme immunoassay, where the levels of the MMPs are higher in patients with ARDS are higher than controls.

The claimed invention is anticipated by the prior art teachings.

- 7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick Nolan whose telephone number is 571-272-0847.
- 8. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Christina Chan, can be reached at 571-272-0841.

Patrick J. Nolan, Ph.D.

Primary Examiner, Group 1640

at I Nolan

January 12, 2004